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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS-FV-12-0062]

Blueberry Promotion, Research and Information Order; Assessment Rate Increase

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on amending the Blueberry Promotion, Research and Information Order (Order) to increase the assessment rate from \$12 to \$18 per ton (an increase of \$0.003 per pound). The Order is administered by the U.S. Highbush Blueberry Council (USHBC) with oversight by the U.S. Department of Agriculture (USDA). Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds would allow the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand would help move the growing supply of blueberries, which would benefit producers and consumers.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Research and Promotion Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon, 97004; telephone: (503) 632-8848; facsimile (503) 632-8852; or electronic mail: Maureen.Pello@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Order (7 CFR part 1218). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that

the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposed rule invites comments on amending the Order to increase the assessment rate from \$12 to \$18 per ton (an increase of \$0.003 per pound). The Order is administered by the USHBC with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds would enable the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand would help move the growing supply of blueberries, which would benefit producers and consumers. This action was unanimously recommended by the USHBC.

The Order specifies that the funds to cover the USHBC's expenses shall be paid from assessments on producers and importers, donations from persons not subject to assessments and

from other funds available to the USHBC. First handlers are responsible for collecting and submitting reports and producer assessments to the USHBC. Handlers must also maintain records necessary to verify their reports. Importers are responsible for paying assessments to the USHBC on highbush blueberries imported into the United States through the U.S. Customs and Border Protection (Customs). The Order also provides for two exemptions. Producers and importers who produce or import less than 2,000 pounds of blueberries annually, and producers and importers of 100 percent organic blueberries are exempt from the payment of assessments.

Section 1218.52(c) of the Order specifies that assessments shall be levied at a rate of \$12 per ton on all highbush blueberries. The assessment rate may be modified with the approval of the Secretary.

The \$12 per ton assessment rate has been in effect since the Order's inception in 2000. The USHBC's fiscal year runs from January 1 through December 31. USHBC expenditures have ranged from \$1,522,519 in 2004 to \$3,931,296 in 2012. Expenditures for health and nutrition research have ranged from \$113,880 in 2004 (7.5 percent of total expenses) to \$668,059 in 2011/2012 (17.0 percent of total expenses).

USHBC expenditures for health messaging and promotion

activities have ranged from \$920,020 in 2004 (60.4 percent of total expenses) to \$2,820,817 in 2012 (71.8 percent of total expenses). Pursuant to section 1218.50(i) of the Order, administrative expenditures have been under 15 percent of total expenses annually.

USHBC assessment income has ranged from \$1,435,989 in 2004 (\$1,080,230 in domestic assessments and \$355,759 in import assessments) to \$4,051,836 in 2012 (\$2,434,646 in domestic assessments and \$1,601,966 in import assessments). Additionally, pursuant to section 1218.50(j) of the Order, the USHBC maintains a monetary reserve with funds that do not exceed one fiscal period's budget.

USHBC 2012 Recommendation

The USHBC met on October 5, 2012, and unanimously recommended increasing its assessment rate from \$12 to \$18 per ton (\$0.006 to \$0.009 per pound). This equates to an increase of \$6 per ton, or \$0.003 per pound. Additional funds would enable the USHBC to expand its health research activities and promotional efforts. Since the program's inception, the USHBC has funded several health and nutritional research projects, many of them laboratory studies. USHBC research has shown possibilities relating to various health issues, including cardiovascular health and cancer. However, most of these

preliminary findings have been done under laboratory conditions. Additional funds would allow the USHBC to incorporate specific areas of research into expanded clinical (human) trials. Clinical trials are important for the industry to be able to make health claims according to the Federal Trade Commission and the Food and Drug Administration requirements for the advertising of food.

The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand would help move the growing supply of blueberries. Worldwide highbush blueberry production has grown from 393 million pounds in 2005 to 753 million pounds in 2010. Production is expected to increase to 1 billion pounds in 2013 and to nearly 1.4 billion pounds by 2015.¹ World highbush blueberry acreage grew from approximately 50,000 acres in 1995 to over 190,000 acres in 2010.² North American highbush blueberry acreage increased by over 55 percent from 71,075 acres in 2005 to 110,290 acres in 2010.³

With highbush blueberry production expected to increase more than 38 percent by 2015, the USHBC hopes to increase consumption among existing blueberry consumers and to attract new blueberry users. Per capita consumption of blueberries

1 Brazelton, C., World Blueberry Acreage & Production, 2011, Brazelton Ag Consulting, p. 49.

2 Brazelton, World Blueberry Acreage & Production, p. 43.

3 Brazelton, World Blueberry Acreage & Production, p. 42.

increased from 15.7 ounces in 2000 to 31.4 ounces in 2009.⁴ According to the North American Blueberry Council, U.S. per capita consumption is now estimated at 36.2 ounces. In order to maintain a balance between supply and demand, a 38 percent increase in per capita consumption would equate to a level of 50 ounces per person by 2015.

At the proposed \$18 per ton assessment rate and assessable tonnage ranging from 350,000 to 500,000 tons (700 million to 1 billion pounds), assessment income could range from \$6.3 million to \$ 9 million annually. As an example, if 15 percent of the budget was allocated to health and nutrition research and 60 percent were allocated to promotion, funds available for health and nutrition research could range from \$945,000 to \$1.35 million annually and funds available for health messaging and promotion could range from \$3.78 million to \$5.4 million annually.

In light of the need to allocate more funds towards health research activities and build demand for blueberries, the USHBC recommended increasing the assessment rate under the Order from \$12 to \$18 per ton (or by \$0.003 per pound). Section 1218.52(c) of the Order is proposed to be amended accordingly. Changes are also proposed to section 1218.52(d)(2) to update the listed

⁴ Kaiser, Henry M., *An Economic Analysis of Domestic Market Impacts of the U.S. Highbush Blueberry Council*, 2010, Cornell University, p. 3.

Harmonized Tariff Schedule of the United States (HTSUS) numbers; this change is administrative in nature and has no impact on the assessment rate.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than \$7.0 million.

There are approximately 2,000 domestic producers, 78 first handlers and 194 importers of highbush blueberries covered under the program. Dividing the highbush blueberry crop value for 2012 reported by the National Agricultural Statistics Service (NASS) of \$781,808,000⁵ by the number of producers (2,050) yields an average annual producer revenue estimate of \$381,370. It is

⁵ Noncitrus Fruits and Nuts 2012 Summary, January 2013, USDA, National Agricultural Statistics Service, p. 10.

estimated that in 2012, about 68 percent of the first handlers shipped under \$7 million worth of highbush blueberries. Based on 2012 Customs data, it is estimated that 90 percent of the importers shipped under \$7 million worth of highbush blueberries. Based on the foregoing, the majority of producers, first handlers and importers may be classified as small entities.

Regarding value of the commodity, as mentioned above, based on 2012 NASS data, the value of the domestic highbush blueberry crop is about \$782 million. According to Customs data, the value of 2012 imports was about \$515 million.

This proposed rule invites comments on amending section 1218.52(c) of the Order to increase the assessment rate from \$12 to \$18 per ton (an increase of \$0.003 per pound). The Order is administered by the USHBC with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds would enable the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand. Increasing demand would help move the growing supply of blueberries, which would benefit

producers and consumers. This proposed rule would also update the HTSUS numbers listed in section 1218.52(d)(2). Authority for this action is provided in section 1218.52(c) of the Order and section 517 of the 1996 Act.

Regarding the economic impact of the proposed rule on affected entities, this action would increase the assessment obligation on domestic producers and importers. While assessments impose additional costs on producers and importers, the costs are minimal and uniform on all. The costs would also be offset by the benefits derived from the operation of the program. It is estimated that 1,857 producers and 173 importers pay assessments under the program.

There have been two economic studies conducted since the Order's inception that evaluated the effectiveness of the USHBC's promotion program. The studies were conducted by Dr. Harry M. Kaiser at Cornell University in 2005 and 2010 and titled "An Economic Analysis of Domestic Market Implications of the U.S. Highbush Blueberry Council." These studies may be obtained from Maureen Pello at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section. The 2005 study evaluated the program from 2001-2004 and the 2010 study evaluated the program from 2001-2009. The purpose of the research was twofold: (1) To determine the domestic market

implications of the USHBC's promotion program and (2) to complete a benefit-cost ratio (rate of return) for the promotion activities conducted by the USHBC. The impact of the USHBC's export marketing activities was not evaluated because most of the USHBC's marketing budget has been invested in the United States (about 90 percent).

To assess the impact of the USHBC's domestic promotion activities on blueberry disappearance (a measure of demand), an econometric demand model was developed for blueberry disappearance in the United States. The model allowed the impact of the USHBC's generic promotion activities to be distinguished from the impact of other factors that influence demand. These include the price of blueberries, the price of blueberry substitutes, population, and consumer taste and preferences.⁶ The research shows that the USHBC's promotion activities increased total blueberry commercial disappearance by 441 million pounds in total, or 49 million pounds per year from 2001 through 2009. This represents an annual increase in blueberry commercial disappearance of 12.3 percent. Thus, the promotional spending by the USHBC has a positive effect on domestic highbush blueberry demand.

⁶ The econometric model used statistical methods with time series data to measure how strongly the various blueberry demand factors are correlated with commercial disappearance in the United States.

The results also indicate that generic blueberry promotion by the USHBC has had a positive impact on the blueberry producers' price. Specifically, from 2001 to 2009, the average increase in price ranged from 14 cents per pound in the case of the least elastic supply response to 5 cents per pound in the case of the most elastic supply response.⁷ The average impact over all supply responses was 8.4 cents per pound. In other words, had there been no generic blueberry promotion by the USHBC, the average producers' price would have been 8.4 cents per pound, or 7.2 percent lower than it was from 2001 through 2009.

The studies also show that USHBC promotion efforts have had a positive impact on producer surplus (i.e., producer profits) from 2001 through 2009. The average increase in producer surplus due to generic blueberry promotion by the USHBC ranged from \$5.4 million per year, in the case of the least elastic supply response, to \$1.9 million per year, in the case of the most elastic supply response. The average increase in producer surplus over all supply responses was \$3.2 million per year. Thus, the studies concluded that the domestic promotion efforts

⁷ Price elasticity of supply is a measure used in economics to show the responsiveness, or elasticity, of the quantity supplied/produced of a good or service to a change in price. When the coefficient is less than one, the supply can be described as inelastic. When the coefficient is greater than one, the supply can be described as elastic.

of the USHBC have had a positive impact on producer profits since 2001.

An average benefit-cost ratio (BCR) for the USHBC's generic promotion activities was also computed. The BCR measures the net benefits of the program, which is equal to the gain in producer surplus divided by the cost of the marketing program. The BCR exceeded 1.0 for every supply response considered in Dr. Kaiser's study.⁸ For the least elastic supply response, the average BCR was 15.41. This implies that, on average from 2001-2009, the benefits of the USHBC promotion program has been over 15 times greater than the costs. At the opposite end of the spectrum in the supply response, the average BCR was computed to be 5.36, implying that the benefits of the USHBC were over five times greater than the costs. Given the wide range of supply responses considered in the analysis, and the fact that the BCR was above 1.0 in all cases, there is significant evidence that the USHBC's promotion programs have been profitable for the domestic blueberry industry. The average BCR over all supply responses was 9.12 (i.e., the benefits of the promotion activities of the USHBC exceeded the costs by nine-fold).

To calculate the percentage of producer revenue represented by the assessment rate, the proposed \$18 per ton (\$0.009 per

⁸ Kaiser, An Economic Analysis, 2010, p. 24.

pound) assessment rate is divided by the average producer price. According to the NASS, the average producer price ranged from \$1.85 per pound in 2011 (\$2.14 per pound for fresh and \$1.28 per pound for processed) to \$1.69 per pound in 2012 (\$2.19 per pound for fresh and \$0.923 per pound for processed).⁹ Thus, the assessment rate as a percentage of producer price could range from 0.486 to 0.532 percent (or from 0.420 to 0.411 percent for fresh and from 0.703 to 0.975 percent for processed).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0093. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on blueberry producers, first handlers and importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

⁹ Noncitrus Fruits and Nuts, p. 35.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding alternatives, the USHBC has been considering an increase in the assessment rate for the past few years. The USHBC has reviewed rates ranging from maintaining the status quo at \$12 per ton to doubling the rate to \$24 per ton. In 2009, the USHBC recommended increasing the rate to \$24 per ton. Two members opposed the increase because a rate of \$18 per ton had been discussed at previous meetings and communicated to producers. USDA published a proposed rule for public comment in July 2009 (74 FR 36955; July 27, 2009) and ultimately withdrew the proposed rule in February 2010 based on the comments received (75 FR 7985; February 23, 2010).

Since that time, the USHBC and its committees have continued to discuss the need to increase the assessment rate. USHBC representatives have met with various producer associations and discussed this issue with their members as well as with importers. Ultimately the USHBC unanimously recommended increasing the rate to \$18 per ton at its October 2012 meeting.

While USDA has performed this initial RFA analysis regarding the impact of the proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis, we invite comments concerning potential effects. USDA is also requesting comments regarding the number and size of entities covered under the proposed Order.

While this proposed rule set forth below has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1218, Chapter XI of Title 7 is proposed to be amended as follows:

PART 1218 — BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for 7 CFR part 1218 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. In § 1218.52, paragraphs (c) and (d)(2) are revised to read as follows:

§ 1218.52 Assessments.

* * * * *

(c) Such assessments shall be levied at a rate of \$18 per ton on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary.

(d) * * *

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0029 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United State or any other numbers used to identify fresh and frozen blueberries. * * *

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Dated: May 10, 2013

David R. Shipman
Administrator

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